

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Fontell D. F.,

Civ. No. 18-2627 (BRT)

Plaintiff,

v.

ORDER

Andrew Saul, Commissioner of Social
Security,

Defendant.

This matter is before this Court on whether this case should be dismissed for lack of prosecution. For the reasons stated below, Plaintiff's Complaint is dismissed without prejudice for lack of prosecution.

BACKGROUND

On September 10, 2018, Plaintiff filed his Complaint seeking review of the decision of the Commissioner of Social Security. (Doc. No. 1.) On November 29, 2018, the Acting Commissioner of Social Security filed an answer and the Social Security administrative record in this matter. (Doc. Nos. 11, 12.)

District of Minnesota Local Rule 7.2 states that "[w]ithin 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum." D. Minn. LR 7.2(c)(1).

Since the filing of the answer and administrative record, the Court has given Plaintiff three significant extensions for filing his summary-judgment motion and

supporting documents. Plaintiff sought his first extension on January 25, 2019. (Doc. No. 15.) The Court granted Plaintiff's motion and set his deadline for March 29, 2019. (Doc. No. 16.) Another extension was sought on March 29, 2019. (Doc. No. 19.) The Court extended the deadline to May 31, 2019, and indicated that no further extensions would be allowed. (Doc. No. 21.) In its last order, the Court provided an extension until June 14, 2019, and stated: "No further extensions will be allowed." (Doc. No. 23.) On August 9, 2019, the Court issued a Show-Cause Order, requiring Plaintiff to explain why his case should not be dismissed for failure of Plaintiff to pursue the case. (Doc. No. 24.) The Court ordered Plaintiff to respond in writing on or before August 21, 2019. (*Id.*) As of the date of this Order, Plaintiff has not filed a response to the Court's August 9, 2019 Order, nor has he filed his summary-judgment motion and supporting memorandum.

DISCUSSION

The facts and circumstances of each case should be evaluated to determine if dismissal for failure to prosecute is warranted. *Navarro v. Chief of Police, Des Moines, Iowa*, 523 F.2d 214, 217 (8th Cir. 1975). This Court concludes that, based on the sequence of events in this case and Plaintiff's lack of response to this Court's May 24 and August 9, 2019 Orders, Plaintiff's case should be dismissed for failure to prosecute.

Federal Rule of Civil Procedure 41(b) states:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

Fed. R. Civ. P. 41(b). “A district court may sua sponte dismiss an action under Rule 41(b) for the plaintiff’s deliberate failure to comply with a court order.” *Holly v. Anderson*, 467 F.3d 1120, 1121 (8th Cir. 2006). As referenced above, Local Rule 7.2 states: “Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum.” D. Minn. LR 7.2 (c)(1).

Here, Plaintiff did not file a summary-judgment motion on or before June 14, 2019, which was the deadline provided by the Court upon granting Plaintiff an extension beyond the 60-day requirement provided in the Rules. Nor has Plaintiff complied with the Court’s August 9, 2019 Show-Cause Order. Based on Plaintiff’s failure to comply with the Court’s Orders, this Court concludes that Plaintiff has abandoned his action and dismisses this action for failure to prosecute.

ORDER

For the reasons stated, and based on the file, records, and submissions therein,
IT IS HEREBY ORDERED that:

Plaintiff’s Complaint (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: August 23, 2019

s/ Becky R. Thorson

BECKY R. THORSON

United States Magistrate Judge